

*Draft Dated as of August 3, 2001*

# AGREEMENT AND PLAN OF MERGER

*By and Among*

**Pacific,**  
A \_\_\_\_\_ For-Profit Corporation;

**CareFirst, Inc.,**  
A Maryland Not-For-Profit Corporation

*and*

**CF Acquisition Corp.,**  
A Maryland Corporation

OCC 010699

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#### APPENDICES

- A - Principal Terms of Plan of Conversion
- B - Definitions
- C - Articles of Merger
- D - Form of Charter of CareFirst
- E - Form of Bylaws of CareFirst
- F - Form of Subordinated Note
- G - Form of Rule 145 Affiliate Agreement

## AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (this "Agreement") is dated as of August \_\_, 2001, by and among Pacific, a \_\_\_\_\_ for-profit corporation ("Purchaser"), CareFirst, Inc., a Maryland not-for-profit corporation ("CareFirst"), and CF Acquisition Corp., a Maryland corporation ("CFAC").

### RECITALS

1. Purchaser directly owns all of the issued and outstanding stock of CFAC;
2. The Board of Directors of each of Purchaser, CareFirst and CFAC (a) have approved the merger of CFAC with and into CareFirst upon the terms and subject to the conditions of this Agreement, including the ancillary agreements executed and delivered pursuant hereto and (b) deem such merger to be in the best interests of their respective companies and subscribers, and, in the case of Purchaser and CFAC, their respective stockholders;
3. Because Purchaser is a for-profit company and CareFirst and the Primary CareFirst Insurers are each not-for-profit companies, it will be necessary for the Primary CareFirst Companies to convert to for-profit status concurrently with the consummation of such merger, and as part of the conversion of the Primary CareFirst Companies, CareFirst will issue 100% of its outstanding shares of capital stock ("CareFirst Common Stock") to certain tax-exempt entities (each, a "Tax-Exempt Entity") to be designated in accordance with applicable laws, so that, immediately prior to the merger, the Tax-Exempt Entities will constitute all of the stockholders of CareFirst. The principal elements of such conversion are as set forth in Appendix A hereto; and
4. Purchaser and CareFirst desire to enter into this Agreement and to make certain representations, warranties, covenants and agreements in connection with the Merger.

NOW THEREFORE, in consideration of the premises and the mutual representations, warranties, covenants and agreements set forth herein, the parties hereto agree as follows:

### ARTICLE I

#### *Definitions*

Terms used in this Agreement not otherwise defined herein shall have the meanings set forth in Appendix B.

## ARTICLE II

### *The Merger*

#### Section 2.1. The Merger.

Subject to the terms and conditions of this Agreement, at the Effective Time (as defined in Section 2.2), CFAC shall be merged with and into CareFirst, and the separate corporate existence of CFAC shall thereupon cease (the "Merger"). CareFirst shall be the surviving corporation in the Merger (sometimes referred to herein as the "Surviving Corporation").

#### Section 2.2. Effective Time.

If all the conditions to the Merger set forth in Article VII shall have been fulfilled or waived in accordance herewith and this Agreement shall not have been terminated as provided in Article VIII, the consummation of the Merger (the "Closing") shall take place at the offices of Piper Marbury Rudnick & Wolfe LLP, 6225 Smith Avenue, Baltimore, Maryland 21209 as promptly as possible, but in no event later than five (5) business days, after the satisfaction or waiver of the conditions to the Closing set forth in Article VII that are to occur prior to, but not on, the date of the Closing. The day the Closing occurs is referred to herein as the "Closing Date." The parties shall cause the Articles of Merger substantially in the form of Appendix C (the "Articles of Merger") to be properly executed and filed with the Maryland State Department of Assessments and Taxation and any other required jurisdictions on the Closing Date. The Merger shall become effective at the time of filing the Articles of Merger or at such later time which the parties hereto shall have agreed upon and designated in such filing as the effective time of the Merger (the "Effective Time").

#### Section 2.3. Charter.

The Charter of CareFirst (substantially in the form of Appendix D) in effect upon its conversion to a stock corporation immediately prior to the Effective Time shall be the Charter of the Surviving Corporation, until duly amended in accordance with applicable law.

#### Section 2.4. Bylaws.

The Bylaws of CareFirst (substantially in the form of Appendix E) in effect upon its conversion to a stock corporation immediately prior to the Effective Time shall be the Bylaws of the Surviving Corporation, until duly amended in accordance with applicable law.

#### Section 2.5. Directors, Officers and Name of CareFirst.

From and after the Effective Time, until successors are duly elected or appointed and qualified in accordance with applicable law, (i) the directors of CFAC immediately prior to the Merger shall be the directors of the Surviving Corporation, and (ii) the officers of CareFirst

immediately prior to the Merger shall be the officers of the Surviving Corporation. The name of the Surviving Corporation from and after the Effective Time shall continue to be "CareFirst, Inc."

### ARTICLE III

#### *Conversion of Shares; Purchase Price; Effects of the Merger*

##### Section 3.1. Conversion of Shares; Purchase Price.

(a) At the Effective Time, each issued and outstanding share of CareFirst Common Stock shall, by virtue of the Merger and without any action on the part of the holder thereof, be converted into the Per Share Amount. The "Per Share Amount" shall consist of the Per Share Cash Consideration plus the Per Share Stock Consideration plus the Per Share Note Consideration, if any. The "Per Share Cash Consideration" shall be an amount of cash determined by dividing (i) the Aggregate Cash Consideration by (ii) the number of shares of CareFirst Common Stock outstanding immediately prior to the Effective Time. The "Per Share Stock Consideration" shall be that number of shares of Purchaser Common Stock determined by dividing (i) the Aggregate Stock Consideration by (ii) the number of shares of CareFirst Common Stock outstanding immediately prior to the Effective Time. The "Per Share Note Consideration" shall be an amount payable in the form of Subordinated Notes with a principal amount determined by dividing (i) the Aggregate Note Consideration by (ii) the number of shares of CareFirst Common Stock outstanding immediately prior to the Effective Time. The Per Share Note Consideration shall only be payable upon the occurrence of the condition set forth in Section 3.1(b).

(b) If the Average Market Price is below \$70.00, then, in addition to the other consideration to be paid hereunder, Purchaser may, at its option, issue a Subordinated Note to each holder of CareFirst Common Stock in a principal amount equal to the Per Share Note Consideration multiplied by the number of shares of CareFirst Common Stock held by such holder. The parties intend that the Subordinated Notes will bear an interest rate such that the Subordinated Notes would, as of the Closing Date, have an arms-length market value equal to the principal amount of the note (provided, however, in determining the market value, the Subordinated Notes, which by their terms may be prepaid at any time without penalty or discount, will be assumed to have a "market" prepayment clause for a note of this type). If the Purchaser anticipates that it may elect to deliver Subordinated Notes in payment of part of the consideration to be delivered to the holders of CareFirst Common Stock, it will notify CareFirst that it may wish to do so at least thirty (30) days prior to the anticipated Closing Date, and CareFirst and the Purchaser shall jointly select a nationally recognized investment banking firm (the "Investment Banking Firm") who then shall be available, if necessary, to arbitrate any final determination of the interest rate to be assigned to the Subordinated Notes. If the Purchaser then elects to deliver Subordinated Notes, at the time that it provides the five (5) Business days' notice prior to the Closing Date of its election to deliver the Subordinated Notes it also will set forth the interest rate that it proposes to assign to the Subordinated Notes, and CareFirst shall

advise the Purchaser within two (2) Business days thereafter whether or not the proposed interest rate is acceptable. If CareFirst advises the Purchaser that the interest rate is not acceptable, and the parties are not able to reach agreement on an interest rate that will establish a market value for the Subordinated Notes consistent with the requirements of this Section 3.1(b), determination of the interest rate will be based upon the written advice of the Investment Banking Firm of the interest rate required in order to cause the Subordinated Notes to have a market value required by the provisions of this Section 3.1(b). All expenses of the Investment Banking Firm shall be paid by the Purchaser.

(c) At the Closing, each holder of outstanding CareFirst Common Stock as shown on the books and records of CareFirst shall receive, in respect of each share of CareFirst Common Stock, a certificate or certificates representing the number of shares of Purchaser Common Stock along with cash (or immediately available funds) and Subordinated Notes (substantially in the form of Appendix F) that together constitute the Per Share Amount.

#### Section 3.2. Effects of the Merger.

The Merger shall have the effects specified in Section 3-114 of the Maryland General Corporation Law.

### ARTICLE IV

#### *Representations And Warranties Of CareFirst*

CareFirst hereby represents and warrants to Purchaser as follows:

#### Section 4.1. Organization, Qualification and Authorization.

(a) CareFirst is a nonprofit, non-stock corporation duly organized, validly existing and in good standing under the laws of the State of Maryland; each CareFirst Subsidiary is listed on the CareFirst Disclosure Schedule. Each Primary CareFirst Insurer is a non-stock corporation of which CareFirst is the sole member and is duly organized, validly existing and in good standing under the laws of its state of formation. Each CareFirst Company (other than CareFirst and the Primary CareFirst Insurers) has been duly formed and is validly existing and in good standing under the laws of its jurisdiction of formation, which jurisdictions are listed on the CareFirst Disclosure Schedule.

(b) Each CareFirst Company has all requisite power and authority, corporate and other, to carry on and conduct its business as it is now being conducted and to own or lease its properties and assets, except where the failure to satisfy the representations of this Section 4.1(b) would not result in a CareFirst Material Adverse Effect. CareFirst has delivered or made available to Purchaser accurate and complete copies of the articles of incorporation and bylaws, or equivalent governing instruments, as currently in effect, of each of the CareFirst Companies as of the date hereof.